IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 17485 of 2006
Date of decision : 6-11-2006

Suresh Kumar ... Petitioner

v.

Presiding Officer, Labour Court, Gurgaon
and another. ... Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. V.S.Bhardwaj, Advocate,
for the petitioner

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ARVIND KUMAR,J:

Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing award dated 16.2.2005 (Annexure P/1), vide which the Labour Court, Gurgaon, though held his termination to be illegal but observed that since there was a technical violation of Section 25-F of the Industrial Disputes Act,1947, he cannot be ordered to be reinstated in service and accordingly, in the facts and circumstances of the case, awarded him a compensation of Rs. 1,20,000/-.

Petitioner-workman on 1.5.1995, joined the services of respondent-department as Mali-cum-Chowkidar. On 28.8.1997, his services were terminated by the department on the ground that the same were no longer required. On termination of his services, the workman served a demand notice upon the department seeking reinstatement with continuity of service and back-wages. On failure of the reconciliation proceedings, the appropriate Government referred the dispute to the Labour Court for

adjudication. The workman filed claim statement before the Labour Court taking the plea that his services have been terminated illegally without any notice or payment of any compensation. Upon notice of the claim statement, the department denied the allegations levelled by the workman. It was pleaded that in case of availability of work in future, the services of the workman would be availed.

In support of their respective case, evidence was led by the parties. Upon appreciation thereof, the learned Labour Court passed the impugned award in the manner indicated above. Hence, the present writ petition by the workman.

We have heard the learned the learned counsel for the petitioner-workman and have also gone through the paper-book carefully.

Learned counsel for the petitioner-workman has referred to the statement of MW-1 A.L.Arora, S.D.E., who admitted in cross-examination that when the petitioner-workman was working with the respondent-department, at that time more than 100 workers were employed, and has developed the argument that Section 25-N of the Act was applicable in the present case and it was obligatory for the respondent-department to give three months' notice as required by Section 25-N of the Act and the non-compliance thereof renders the termination invalid. The contention is meritless. Section 25-N of the Act is placed in Chapter V-B of the Act which according to Section 25-K has an application only to an industrial establishment in which not less than 100 workmen were employed in an average per working day for the preceding 12 months. There was no such plea before the Labour Court. A bare perusal of the claim statement shows that there were no such pleadings before the Labour Court. Now this plea need not detain us any longer. The infirmity in retrenchment by reference to Section 25-N cannot be ventured to be found out without laying factual foundation attracting application of the provision. It is basically a question of fact. In the absence of requisite pleadings having been raised and documents having been brought on record of the Labour Court, we are not persuaded to entertain the plea. Thus, we refrain ourselves to entertain the said plea having been raised for the first time before this Court in proceedings under Article 226 of the Constitution of India. Clause(b) of Section 25-F of the Act expressly provides for payment of retrenchment

compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. In other words, a tender of compensation under Section 25-F of the Act, in order to be valid, should be of precise amount and should be made simultaneously with termination of service. This is a condition precedent to a valid order of retrenchment. In the instant case, perusal of the impugned award shows that the Labour Court has observed that no retrenchment compensation was paid at the time of retrenchment and has thus, held the termination of the petitioner-workman to be illegal, in technical violation of Section 25-F of the Act.

In this back-drop, upon the finding that no post is available for re-employment of the petitioner and the stand of the department that he would absorbed in case of availability of work in future, the compensation of Rs.1,20,000/- awarded in lieu of reinstatement with back-wages, cannot be said to be illegal. Learned counsel for the petitioner-workman has not shown anything to convince us to take any contrary view.

In view of what has been stated above, we find no infirmity or illegality in the findings arrived at by the learned Labour Court. The writ petition being wholly without merit stands dismissed in limine.

(ARVIND KUMAR)
JUDGE

(J. S. NARANG)
JUDGE

November 6, 2006
JS